



March 24, 2021

**By Overnight Mail and Electronic Mail
Confidential Business Information**

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Re: DOJ No. 90-5-2-1-09729

S. Shawn Sibley
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Alabama Department of
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1300 Coliseum Boulevard
Montgomery, Alabama 36110

Re: Force Majeure Notification – Update Letter 10

Ladies and Gentlemen:

In accordance with the Consent Decree between Continental Carbon Company (“CCC”) and the United States, the Oklahoma Department of Environmental Quality (“ODEQ”), and the State of Alabama and the Alabama Department of Environmental Management, Consent Decree, *United States et al. v. Continental Carbon Co.*, Case 5:15-cv-00290-F (W.D. Okla. May 7, 2015), *as amended* First Amendment to Consent Decree (May 25, 2018) (“Decree”), including

Section XV and Paragraph 71 of the Decree, this letter follows up on our April 28, 2020 written notice of a force majeure event and potential noncompliance with obligations under the Decree as a result of the COVID-19 global pandemic and other issues and provides additional information as requested in the U.S. EPA's letter of May 14, 2020. Like the April 28 notice, this letter shall be handled as Confidential Business Information under federal and state law.

Specifically, the EPA letter asked CCC to provide regular updates to its notice, including items listed in the Attachment to the letter. For some items, there were no material updates from the last submittal, and these have been noted as such.

Ponca City

1. Provide an update when any of Defendant's employees begin working onsite, including the number of employees and a description of the activities they perform.

UPDATED: [REDACTED]. The company has retained most of its employees to continue to operate and maintain the facility. Workers are performing normal operation activities, as well as maintenance work, cleaning, housekeeping, and other miscellaneous duties.

2. Provide any updates received from Defendant's contractors related to COVID-19.

UPDATED: See discussion below, regarding ongoing fan delays caused by contractor design issues, compounded by COVID-19 delays. CCC has implemented a protocol to allow visitors onsite and maintain a safe working environment, including use of masks, sanitation, and social distancing. CCC continues to minimize work crews onsite to reinforce the social distancing protocols. These protocols have slowed the pace of required work onsite.

3. Provide any updates, orders, or directives from state and local officials related to COVID-19.

UPDATED: The governmental updates are a matter of public record, but we note for EPA that in general, the Governor of Oklahoma has announced a phased reopening, which Ponca City has stated it will follow. Oklahoma is currently in Phase 3 of its reopening plan, with recent reports of new cases declining.
<https://oklahoma.gov/covid19/newsroom/2021/january/state-department-of-health-comments-on-spike-in-covid-19-case-nu.html>
<https://www.governor.ok.gov/newsroom>
https://www.governor.ok.gov/articles/press_releases/oklahoma-to-begin-phase-3-of-open-up-and-recover

4. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, broken out by month), that specifies the work being performed, the number of contractors expected to be on site. (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.

UPDATED: There remain ongoing technical issues [REDACTED] that will delay full operation of our Air Quality Control System ("AQCS") by April 1, issues that have been compounded by the difficulties and delays caused by COVID-19. Despite CCC's best

efforts – including significant additional investments in time and resources – these issues have not been fully resolved.¹

[REDACTED]

Boxerman to EPA (April 28, 2020).

Over the past year, [REDACTED]

Given the timeline under the Decree and the challenge of bringing on a new vendor, particularly during COVID, [REDACTED] – but engaged at its expense two industry experts, [REDACTED], to review the [REDACTED] designs and equipment and assist CCC in the discussions with [REDACTED]

Based on extensive discussions [REDACTED]

Thereafter, [REDACTED] a new generation of [REDACTED] This evaluation process was itself slowed because of delays in obtaining certain additional equipment. [REDACTED]

¹ [REDACTED]

However, during the assembly and re-commissioning [REDACTED] redesign, it became apparent to CCC that the latest [REDACTED] design had not fully resolved all issues [REDACTED]

Unfortunately, [REDACTED] work has taken substantially longer than anticipated, because of extreme difficulty to retain the highly specialized design resources and a scarcity of the steel plate required during the second half of 2020 due to the effects of the COVID-19 pandemic. Pent up demand for industrial components that had come to a standstill due to COVID in the first half of the year, overwhelmed suppliers across the supply chain during the third and fourth quarters. CCC tried to mitigate these delays by having its own purchasing staff help [REDACTED] locate sources for certain materials, but the timeline has still been extended – and these pandemic related delays are ongoing. [REDACTED]

All told, CCC has spent over [REDACTED] over the past year trying to resolve the [REDACTED] issues, including more than [REDACTED], and substantial internal engineering resources and associated expenses.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CCC hopes that after this extensive effort, working [REDACTED] will be in place across our plant in the coming months. However, because the [REDACTED] have not consistently operated successfully to date, CCC remains uncertain whether the [REDACTED] will operate as designed once fully installed.

There is one additional issue that could interfere with timely startup that CCC would like to bring to your attention related to [REDACTED]

[REDACTED] During testing over the past two months, as the [REDACTED] had greater run time, the [REDACTED] showed [REDACTED] that would impair operation. Repairs are being done as directed by [REDACTED], which we presently anticipate will be complete in April.

CCC wants to reemphasize that we have taken other steps and invested additional resources to otherwise be ready by April 1. For example, the project required a natural gas line connection (at a cost of [REDACTED] million), and given delays by Oklahoma Natural Gas, CCC was compelled to revise the routing of the line to expedite the installation and ensure the

² [REDACTED]

connection by October 2020. Notice Letter at 4-5. That resulted in a [REDACTED] price increase. Plus, CCC invested an additional [REDACTED] [REDACTED] to obtain liquid natural gas in the interim to guarantee continuity of commissioning of the boilers upstream of and associated with the AQCS units.

Phenix City

1. Provide an update when any of Defendant's employees begin working onsite, including the number of employees and a description of the activities they perform.

UPDATED: CCC's Phenix City has had employees test positive for the COVID-19 virus. The absences of the infected employees continue to stress the remaining work force. Employees are performing normal operation activities, as well as maintenance work, cleaning, housekeeping, and other miscellaneous duties. Plant operability for February was [REDACTED]

2. Provide any updates received from Defendant's contractors related to COVID-19.

UPDATED: All non-essential travel continues to be restricted by CCC and their contractors ([REDACTED]). These travel restrictions during the COVID-19 pandemic have had a negative impact on the overall project schedule.

3. Provide any updates, orders, or directives from state and local officials related to COVID-19.

NO CHANGE: The governmental updates are a matter of public record. Alabama has developed a color-coded risk system to guide reopening. Phenix City is located in Russell County, which is currently designated as "Moderate Risk":
<https://www.alabamapublichealth.gov/covid19/guidance.html>

4. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, broken out by month), that specifies the work being performed, the number of contractors expected to be on site. (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.

UPDATED: [REDACTED]
[REDACTED]. The challenges to manage the planning for the project have remained difficult considering the COVID-19 pandemic. The schedule continues to have a high level of uncertainty due to the everchanging situation associated with the COVID-19 pandemic and has been revised accordingly. CCC's engineering service providers, [REDACTED] [REDACTED] have continued to review the updated equipment delivery expectations from potential vendors so a project schedule can be revised accordingly.

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5. Provide clarification regarding the following: “there is substantial uncertainty regarding the equipment that will have to be purchased, once the design is completed.”

UPDATED: The disruptions to the equipment supply chain continues to be a significant issue. Equipment suppliers from [REDACTED] continue to struggle to provide timely responses to RFP’s (requests for proposals) and equipment deliveries continue to be uncertain due to the negative impact of the worldwide pandemic. CCC continues to review both domestic and global sourcing for the project to manage the negative impact of the global pandemic.

Should you have any questions, please contact me at (281) 647-3841 or dhetu@continentalcarbon.com.

Sincerely,

Dennis Hetu
President, Continental Carbon Company

cc: Sam Boxerman, Sidley Austin (by email)
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